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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAY 21 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of the Commission's)
Rules to Provide Channel)
Exclusivity to Qualified)
Private Carrier Paging)
Systems at 929-930 MHz)

PR Docket No. 93-35
RM-7986

To: The Commission

REPLY COMMENTS OF PAGEMART, INC.

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SUMMARY

The initial round of comments reveals strong support for the Commission's proposals, although numerous modifications and suggestions for fine-tuning have been proposed. Some of the proposed fine-tuning has merit. However, many of the comments propose extensive modifications that are unnecessarily detailed or, in some instances, so onerous as to be counterproductive. In other cases, commenters have sought to utilize this rulemaking to seek regulatory relief in areas far beyond the scope of this proceeding.

In these reply comments, PageMart reiterates its strong support for the Commission's proposal to grant earned exclusivity to private carrier paging ("PCP") operators who meet certain basic thresholds, particularly with respect to those PCP companies that already have put enormous resources at risk in an effort to create the very networks that the NPRM seeks to foster. PageMart urges the Commission to avoid burdening the rulemaking with unnecessary complexity and to disregard those comments that seek to use the rulemaking as a means to obtain regulatory relief unrelated to the issues presented. PageMart also reiterates its concern that the Commission interpret the NPRM in a manner that will not disadvantage existing licensees.

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PageMart, Inc. ("PageMart"), by its attorneys,
hereby replies to the comments filed by various parties in
response to the Notice of Proposed Rulemaking, FCC 93-101
(March 31, 1993) ("NPRM"), released by the Commission in the
instant proceeding.

PageMart reiterates its strong support for the
Commission's proposal to grant channel exclusivity in the
900 MHz band, albeit with a few essential reservations.
Adoption of the Commission's proposal will promote the
development of the paging industry and stimulate competition
among paging companies, and will allow consumers to take
advantage of the lower prices and expanded services that
will flow from such competition.

Below, PageMart urges the Commission to disregard
requests for regulatory relief that are beyond the scope of
this proceeding, or that would impose unnecessary layers of


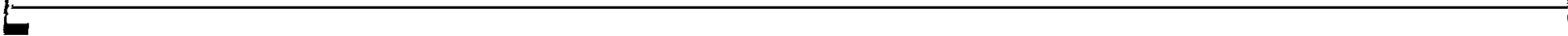
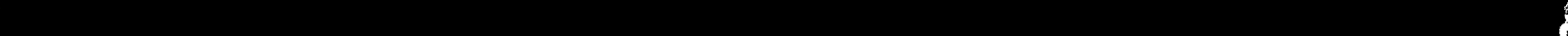



regulation. PageMart also reiterates its concern that the Commission interpret the NPRM in a manner that will not disadvantage existing licensees, who have committed substantial resources to the development of the paging industry.

I. THE COMMISSION SHOULD DISREGARD REQUESTS FOR REGULATORY

Commission's exclusivity proposals would be inequitable unless extended to the other private paging bands.^{3/}

All of these views have already been considered and rejected by the Commission. As the Commission stated in the NPRM, it is essential that exclusivity be implemented sooner rather than later, in order to prevent congestion on the 900 MHz channels before it occurs and in order to create a more stable, predictable environment for PCP licensees.^{4/} Delaying implementation of PCP channel exclusivity, pending an indefinite review of broader Commission regulation of common and private paging services, would be wholly unwarranted. As the Commission has pointed out, moreover, such a review is beyond the scope of this proceeding.^{5/}

Paging companies already occupy much of the available spectrum on PCP channels below 900 MHz; granting the sort of frequency exclusivity at issue here for those channels simply is not feasible.^{2/} This rulemaking was initiated as an effort to avoid a repetition of the problems faced in the lower PCP bands. PCP operators who seek regulatory relief from problems faced in the lower bands



burdens, and spectrum disputes.^{8/} In many respects, these comments appear to be intended to thwart, rather than to assist, the Commission's efforts. As such, these commenters' suggestions should be viewed with caution.

For example, Mtel claims to support the concept of earned exclusivity (something it has strenuously opposed in previous filings)^{9/}, but only if certain "refinements" are added to prevent speculation and warehousing.^{10/} Mtel proposes that the Commission require that operators certify that they serve a minimum number of subscribers before

Other commenters urge the Commission to adopt additional layers of protection for existing licensees. Metagram and MAP, for example, propose that the Commission give existing licensees an additional year to complete their systems before they face competition from new entrants.^{13/} While it is tempting for PageMart to support such proposals (since PageMart would benefit from the exclusion of competitors), these modifications are unnecessary and could lead to anticompetitive consequences. With the clarifications discussed in Section III(c) below, the Commission's existing grandfathering proposal should be sufficient to protect investors who have already made significant commitments to nationwide, regional and local PCP systems. Grandfather rights should not be expanded to the point where fair competition would be impaired.^{14/}

^{13/} See Comments of Metagram America, Inc. /Metagram

III. PAGEMART SUPPORTS THOSE COMMENTS THAT WOULD STREAMLINE REGULATION.

A number of commenters have made constructive suggestions that will either streamline implementation of the exclusivity regulations, or will provide added protections against speculation, but with minimal additional regulatory burden. PageMart supports these suggestions, as outlined below.

A. Existing Nationwide Systems Using Frequency-Agile Or Co-Located Transmitters Should Not Be Penalized With Regard To The 300 Transmitter Threshold.

Numerous commenters urged the Commission to permit co-located transmitters to operate on different frequencies.^{15/} The views expressed by these commenters are analogous to those previously expressed by PageMart regarding frequency-agile transmitters, which many existing PCP operators utilize in their systems.^{16/} Other operators utilize co-located transmitters that broadcast over different frequencies.

PageMart believes that it is essential that the Commission take into account the network configurations that are in extensive use in the paging market, and which rely on

^{15/} See, e.g., Comments of Paging Network, Inc. ("PageNet Comments") at 14-15; MCB Comments at 2-3; Comments of Arch Communications Group, Inc. ("Arch Comments") at 7-8; Comments of Thomas W. Luczak ("Luczak Comments") at 2-3.

^{16/} Comments of PageMart, Inc. ("PageMart Comments") at 8.

frequency-agile transmitters. Nationwide operators must be permitted to count these transmitters toward the exclusivity thresholds in a manner that still would require them to meet the 300-transmitters-per-frequency benchmark. They simply would have the flexibility of allocating their frequency-agile (or, alternatively, co-located transmitters) among specific frequencies for purposes of meeting the exclusivity standard.

As PageMart demonstrated in its initial comments, at 8-10, failure to grant nationwide operators this flexibility would severely penalize those firms that have made the enormous investment to develop national systems -- perhaps even forcing the abandonment of existing facilities used for overflow, ongoing expansion and system management -- and would discourage future investment in these systems.

B. Nationwide Operators Should Be Permitted To Obtain At Least Two Exclusive Frequencies.

Several commenters have supported the concept of permitting operators to obtain at least two exclusive frequencies.^{17/} As PageMart noted in its initial comments, at 10-12, it is essential that the restrictions on multiple channel applications be clarified, to allow PCP operators with frequency-agile systems to apply for more than one

^{17/} See, e.g., MCB Comments at 3; Arch Comments at 3-4.

frequency for use with these transmitters. In a growing nationwide system, usage in various markets can fluctuate widely based on a host of factors. Id. at 11. Additional channels must be available to meet these requirements. Operators should be permitted to utilize these frequencies in the most economical manner possible in order to offer their customers the lowest possible costs.

As demonstrated with regard to the treatment of frequency-agile transmitters, the Commission must take into account the network configuration patterns and service methodologies that have evolved in the PCP segment of the industry in fashioning its new rules. Nationwide operators in the current shared-use system already have sought second frequencies in each major market, not out of a desire to warehouse, but out of competitive necessity. The Commission should recognize these existing market pressures by explicitly providing for the upgrading and expansion of nationwide PCP systems, as it has done in its regulation of other mobile services.

In the cellular and SMRs services, for example, the Commission channel assignment scheme provides, at the outset, for far more capacity than is likely to be needed in the near term. In doing so, the Commission recognized the need for rapid expansion, unhindered by regulatory obstacles, and the fact that the frequencies needed for

expansion might otherwise become unavailable. A similar assignment plan appears to be favored for PSC. In essence, nationwide PCP operators seek the ability to build into their systems the same rapid response capability.

In the 220 MHz band, the Commission went a step further and specifically carved out frequencies for nationwide systems. While the history and development of the 900 MHz PCP band makes such a nationwide set-aside impracticable here, the Commission should permit the marketplace to do what it did by regulatory fiat in the 220 MHz band; the PCP regulatory structure should not inhibit a licensee's ability to plan ahead for rapid expansion by obtaining multiple nationwide channels.

A failure to provide in advance for the expansion and upgrading of nationwide PCP systems could undermine the enormous investment made by existing PCP operators in their systems. The new PCP regulatory structure must recognize these substantial embedded investments and be sufficiently flexible to enable licensees to continue to meet marketplace demands.

C. Grandfathering Provisions Should Be Clarified To Prevent Conflicts Between Local, Regional And Nationwide Systems.

A number of commenters have expressed concern that the Commission's grandfathering proposals may not adequately

protect existing licensees against speculation.^{18/} While PageMart does not believe that grandfather rights need to be dramatically expanded (as some commenters have proposed), PageMart agrees that the Commission's grandfathering proposals should be clarified to reduce the potential for speculation and for conflict between different systems.

Under the Commission's current proposal, for example, there does not appear to be anything to prevent local or regional operators from applying for exclusivity on frequencies that are utilized by nationwide (or regional) operators in other markets. As a result, nationwide (and regional) systems could end up with large gaps in their "exclusive" networks, leaving their subscribers without the ability to obtain service in certain markets. A disturbing possibility exists that speculators could essentially blackmail regional and nationwide operators by filing applications for a few local markets on the frequency already used by the larger system, thereby blocking that system's expansion into the affected markets until the larger operator agreed to buy them out.

To reduce the risk of such speculation, PageMart urges the Commission to clarify its grandfathering proposals to require local or regional licensees who have been

^{18/} See, e.g., American Paging Comments at 8-9; Mtel Comments at 10; PacTel Comments at 22; Metagram Comments at 1, 16-18, 20-22; MAP Comments at 1-2, 4-8.

licensed (but who have not yet constructed) on frequencies utilized by a nationwide system to relocate to other channels upon the request of the nationwide licensee. Local or regional operators who already have built their systems (or the licensees of unbuilt systems in situations in which an alternative frequency is not available) should be required to share their frequencies with nationwide operators who have earned exclusivity on the same frequencies.

D. Construction Deadlines Should Be Reasonable.

PageNet has suggested that the "slow growth" period proposed in the NPRM^{19/} be reduced from three years to 18 months.^{20/} In PageMart's view, this could result in substantial anticompetitive consequences, with no countervailing public interest benefits. A shortening of the "slow growth" period would benefit only large operators with the resources to construct transmitters at a more rapid pace. Smaller operators could find themselves shut out of nationwide networks if such a requirement were imposed.

The Commission's three-year proposal includes the requirement that applicants demonstrate a reasonable need for the three year extension, a detailed construction

^{19/} NPRM ¶¶ 30-31.

^{20/} PageNet Comments at 10.

timetable, and evidence of financial ability to construct the systems. Applicants who fail to complete construction

E. PageMart Supports The Use Of Forfeiture Bonds In

CONCLUSION

With minor modifications, PageMart enthusiastically supports the Commission's proposal for channel exclusivity in the 900 MHz band. PageMart urges the Commission to disregard those comments that would unnecessarily burden or sidetrack this rulemaking. The Commission's proposals enjoy broad support from PCP operators, and should be implemented on an expedited basis.

Respectfully submitted,

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May 21, 1993

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